

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1203

AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 14-8-2-117.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 117.3. "Governmental entity", for the purposes of IC 14-22-10-2, **and** IC 14-22-10-2.5, **and IC 14-34-19-15**, has the meaning set forth in IC 14-22-10-2(a).

SECTION 2. IC 14-25-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) The general assembly finds that a diversion of water out of the Great Lakes will impair or destroy the Great Lakes. The general assembly further finds that the prohibition of a diversion of water from the Great Lakes is consistent with the mandate of the Preamble to and Article 14, Section 1 of the Constitution of the State of Indiana, the United States Constitution, and the federal legislation according to which Indiana was granted statehood.

(b) Water may not be diverted from that part of the Great Lakes drainage basin within Indiana ~~for use in a state outside the basin~~, unless the diversion is approved by the governor of each Great Lakes state **under 42 U.S.C. 1962d-20 (Water Resources Development Act)**.

(c) **The commission shall adopt rules necessary to implement this section.**

SECTION 3. IC 14-25.5-4-6, AS ADDED BY P.L.145-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C
o
p
y

HEA 1203 — CC 1+



JULY 1, 2004]: Sec. 6. **Except as provided in IC 14-26-7-8, IC 14-27-6-52, IC 14-29-1-3, IC 14-29-7-25, and IC 14-29-8-5,** a person who knowingly violates **an article enforced under** this article commits a Class B infraction. Each day a violation occurs is a separate infraction.

SECTION 4. IC 14-26-2-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. ~~(a) The department may seek and a court having jurisdiction may grant injunctive relief under IC 14-25.5-4 for the violation of this chapter. The plaintiff in such a cause is not required to give bond; and after the filing of the action and the service of notice all matters involved in the action shall be held in abeyance until the action is tried and determined.~~

~~(b) If a defendant continues to violate this chapter after the service of notice of the action and before trial, the plaintiff is entitled, upon a verified showing of the acts on the part of the defendant, to a temporary restraining order without notice. The temporary restraining order is effective until the cause has been tried and determined.~~

SECTION 5. IC 14-26-2-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 20. The department may bring an action ~~in any court having jurisdiction under IC 14-25.5-4~~ for damages caused by a person who violates this chapter.

SECTION 6. IC 14-26-2-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 21. A person who **knowingly** violates this chapter commits a ~~Class C~~ **Class B** infraction.

SECTION 7. IC 14-26-2-22, AS AMENDED BY P.L.24-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 22. ~~(a) In addition to other penalties prescribed by this chapter or IC 13-2-11.1 (before its repeal), the director may impose a civil penalty under IC 4-21-5, not to exceed one thousand dollars (\$1,000), on a person who violates any of the following:~~

~~(1) Section 6, 7, 8, 9, 10, 11, 12, 13, 18, or 23 of this chapter.~~

~~(2) A rule relating to section 6, 7, 8, 9, 10, 11, 12, 13, 18, or 23 of this chapter.~~

~~(3) A permit under this chapter.~~

~~(b) Each day a violation continues after a civil penalty is imposed under subsection (a) constitutes a separate violation.~~

~~(c) Civil penalties imposed under this section shall be deposited in the state general fund. IC 14-25.5-4.~~

SECTION 8. IC 14-26-5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17. A person who **knowingly** violates section 3 of this chapter commits a Class B

C
o
p
y



infraction.

SECTION 9. IC 14-26-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A person who **knowingly** lowers the water level of a lake more than twelve (12) inches below the high water mark established by the dam or other artificial device creating the lake commits a ~~Class C~~ **Class B** infraction.

SECTION 10. IC 14-27-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A person who **knowingly** rides or drives upon or over a levee constructed under law, except for the purpose of:

- (1) passing over the levee:
 - (A) at a public or private crossing; or
 - (B) upon a part of a public highway; or
- (2) inspection or repair;

commits a ~~Class C~~ **Class B** infraction.

SECTION 11. IC 14-27-7-5, AS AMENDED BY P.L.148-2002, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. ~~(a)~~ If the department finds that a dike, floodwall, levee, or appurtenance is:

- (1) not sufficiently strong;
- (2) not maintained in a good and sufficient state of repair or operating condition; or
- (3) unsafe and dangerous to life or property;

the department shall issue a notice of violation to the owner of the dike, floodwall, levee, or appurtenance ~~to make or cause to be made; at the owner's expense; the maintenance, alteration, repair, reconstruction, change in construction or location; or removal that the department considers reasonable and necessary.~~

~~(b) The department shall limit in the notice the time for compliance with the notice based on the seriousness of the circumstances involving the structure.~~

~~(c) The owner shall comply with the notice: under IC 14-25.5-2.~~

SECTION 12. IC 14-27-7-7, AS AMENDED BY P.L.148-2002, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. An owner who **knowingly** fails to effect the maintenance, alteration, repair, reconstruction, change in construction or location, or removal within the time limit set forth in the notice of violation of the department under:

- (1) section 5 of this chapter; or
- (2) IC 13-2-20-4 (before its repeal);

commits a Class B infraction. Every day of failure constitutes a

C
o
p
y



separate infraction.

SECTION 13. IC 14-27-7.5-7, AS ADDED BY P.L.148-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. **(a)** The owner of a structure shall maintain and keep the structure in the state of repair and operating condition required by the following:

- (1) The exercise of prudence.
- (2) Due regard for life and property.
- (3) The application of sound and accepted technical principles.

(b) The owner of a structure shall notify the department in writing of the sale or other transfer of ownership of the structure. The notice must include the name and address of the new owner of the structure.

SECTION 14. IC 14-27-7.5-11, AS ADDED BY P.L.148-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. ~~(a)~~ If the department finds that a structure is:

- (1) not sufficiently strong;
- (2) not maintained in a good and sufficient state of repair or operating condition;
- (3) not designed to remain safe during infrequent loading events;
- or
- (4) unsafe and dangerous to life and property;

the department may issue a notice of violation ~~by letter to the owner of the structure. The notice may require the owner of the structure to make or cause to be made, at the owner's expense, the maintenance, alteration, repair, reconstruction, change in construction or location, or removal that the department considers reasonable and necessary.~~

~~(b) The department shall limit in the notice the time for compliance with the notice based on the seriousness of the circumstances involving the structure.~~

~~(c) The owner shall comply with the notice: under IC 14-25.5-2.~~

SECTION 15. IC 14-27-7.5-13, AS ADDED BY P.L.148-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. An owner who **knowingly** fails to effect the maintenance, alteration, repair, reconstruction, change in construction or location, or removal within the time limit set forth in the notice of violation of the department under:

- (1) section 11 of this chapter; or
- (2) IC 13-2-20-4 (before its repeal);

commits a Class B infraction. Every day of failure constitutes a separate infraction.

C
o
p
y



SECTION 16. IC 14-27-7.5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 16. (a) A property owner, the owner's representative, or an individual who resides downstream from a structure:**

(1) over which the department does not have jurisdiction under this chapter; and

(2) that the property owner, the owner's representative, or the individual believes would cause a loss of life or damage to the person's home, industrial or commercial building, public utility, major highway, or railroad if the structure fails;

may request in writing that the department declare the structure a high hazard structure.

(b) If the department receives a request under subsection (a), the department shall:

(1) investigate the structure and the area downstream from the structure;

(2) notify the owner of the structure that the structure is being investigated;

(3) review written statements and technical documentation from any interested party; and

(4) after considering the available information, determine whether or not the structure is a high hazard structure.

(c) The department shall issue a written notice of the department's determination under subsection (b) to:

(1) the individual who requested the determination; and

(2) the owner of the structure that is the subject of the request.

(d) Either:

(1) the individual who requested a determination; or

(2) the owner of the structure that is the subject of the request;

may request an administrative review under IC 4-21.5-3-6 within thirty (30) days after receipt of the written determination.

(e) If the department determines that a structure is a high hazard structure under subsection (b), the provisions of this chapter concerning high hazard structures apply to the structure.

SECTION 17. IC 14-28-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 24. (a) This section does not apply to the reconstruction of a residence located in a boundary river floodway.**

**C
o
p
y**



(b) A person may not begin the reconstruction of an abode or a residence that:

- (1) is located in a floodway; and
 - (2) is substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1993) by a means other than floodwater;
- unless the person has obtained a permit under this section or section 26.5 of this chapter.

(c) A person who desires to reconstruct an abode or a residence described in subsection (b) must file with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars (\$50). An application submitted under this section must do the following:

- (1) Set forth the material facts concerning the proposed reconstruction.
- (2) Include the plans and specifications for the reconstruction.

(d) The director may issue a permit to an applicant under this section only if the applicant has clearly proven all of the following:

- (1) The abode or residence will be reconstructed:
 - (A) in the area of the original foundation and in substantially the same configuration as the former abode or residence; or
 - (B) in a location that is, as determined by the director, safer than the location of the original foundation.
- (2) The lowest floor elevation of the abode or residence as reconstructed, including the basement, will be at or above the one hundred (100) year flood elevation.
- (3) The abode or residence will be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (4) The abode or residence will be reconstructed with materials resistant to flood damage.
- (5) The abode or residence will be reconstructed by methods and practices that minimize flood damages.
- (6) The abode or residence will be reconstructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located to prevent water from entering or accumulating within the components during conditions of flooding.
- (7) The abode or residence, as reconstructed, will comply with the minimum requirements for floodplain management set forth in 44 CFR Part 60, as in effect on January 1, 1993.

C
O
P
Y



(e) When granting a permit under this section, the director may establish and incorporate into the permit certain conditions and restrictions that the director considers necessary for the purposes of this chapter.

(f) A permit issued by the director under this section is void if the reconstruction authorized by the permit is not commenced within two (2) years after the permit is issued.

(g) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected by the permit.

(h) The person to whom a permit is issued under this section shall post and maintain the permit at the site of the reconstruction authorized by the permit.

(i) A person who **knowingly**:

(1) begins the reconstruction of an abode or a residence in violation of subsection (b);

(2) violates a condition or restriction of a permit issued under this section; or

(3) fails to post and maintain a permit at a reconstruction site in violation of subsection (h);

commits a ~~Class C~~ **Class B** infraction. Each day that the person is in violation of subsection (b), the permit, or subsection (h) constitutes a separate infraction.

SECTION 18. IC 14-28-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) A person who desires to reconstruct an abode or a residence that:

(1) is located in a floodway; and

(2) is not substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1997) by a means other than floodwater;

is not required to obtain a permit from the department for the reconstruction of the abode or residence if the reconstruction will meet the requirements set forth in 44 CFR Part 60, as in effect on January 1, 1997.

(b) A person who **knowingly** reconstructs an abode or a residence described in subsection (a) in a way that does not comply with the requirements referred to in subsection (a) commits a ~~Class C~~ **Class B** infraction.

SECTION 19. IC 14-28-1-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 32. (a) A person who

C
o
p
y



knowingly violates section 20(2), 20(3), or 29 of this chapter commits a Class B infraction.

(b) Each day of continuing violation after conviction of the offense constitutes a separate offense.

SECTION 20. IC 14-28-1-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A person who **knowingly** fails to:

(1) comply with the requirements of section 20(1) of this chapter;
or

(2) obtain a permit under section 22 of this chapter;

commits a ~~Class C~~ **Class B** infraction.

(b) Each day a person violates section 20(1) or 22 of this chapter constitutes a separate infraction.

SECTION 21. IC 14-28-1-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 34. A person who **knowingly** fails to comply with section 22(i) of this chapter commits a ~~Class D~~ **Class B** infraction. Each day a person violates section 22(i) of this chapter constitutes a separate infraction.

SECTION 22. IC 14-28-1-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 35. The commission may ~~maintain an action to~~ enjoin a violation of this chapter **under IC 14-25.5-2**.

SECTION 23. IC 14-28-1-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 36. ~~(a)~~ In addition to other penalties prescribed by this chapter, the director may impose a civil penalty under ~~IC 4-21-5, not to exceed one thousand dollars (\$1,000), on a person who violates any of the following:~~

~~(1) Section 20, 22, 27, or 29 of this chapter;~~

~~(2) A rule relating to section 20, 22, 27, or 29 of this chapter;~~

~~(3) A permit issued under this chapter;~~

~~(b) Each day a violation continues after a civil penalty is imposed under subsection (a) constitutes a separate violation;~~

~~(c) Civil penalties imposed under this section shall be deposited in the state general fund. IC 14-25.5-4.~~

SECTION 24. IC 14-29-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) A person who **knowingly** takes sand, gravel, stone, or other mineral or substance from or under the bed of the navigable water of Indiana without a permit commits a Class B infraction.

(b) Each day a violation continues constitutes a separate infraction.

SECTION 25. IC 14-29-4-9 IS AMENDED TO READ AS

C
o
p
y



FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) A person who **knowingly** violates this chapter commits a ~~Class C~~ **Class B** infraction.

(b) Each day of continuing violation after conviction of the offense constitutes a separate offense.

SECTION 26. IC 14-34-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. **(a)** After a permit is issued, the permittee may apply to the director for the release of all or part of the bond or deposit. As part of the bond release application, the permittee must do the following:

(1) Submit copies of letters that the permittee has sent by certified mail to:

- (A) adjoining property owners;
- (B) local government bodies;
- (C) planning agencies;
- (D) sewage and water treatment authorities; or
- (E) water companies;

in the county in which the surface coal mining and reclamation operation is located notifying the entities of the bond release application.

(2) Within thirty (30) days after filing the bond release application, submit a copy of an advertisement placed at least one (1) time a week for four (4) successive weeks in a newspaper of general circulation in the county in which the surface coal mining and reclamation operation is located. The advertisement must contain the following:

- (A) A notification of the precise location of the land affected.
- (B) The number of acres.
- (C) The permit and the date of approval.
- (D) The amount of the bond filed and the part sought to be released.
- (E) The type and appropriate dates of reclamation work performed.
- (F) A description of the results achieved relating to the operator's approved reclamation plan.

(b) The director may initiate an application for the release of a bond. If a bond release application is initiated by the director, the department shall perform the notification and certification requirements otherwise imposed on the permittee under this section and section 8 of this chapter.

SECTION 27. IC 14-34-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) This section

**C
o
p
y**



applies to the following:

- (1) A person with a legal interest that might be adversely affected by release of a bond.
- (2) The responsible officer or head of a federal, state, or local governmental agency that:
 - (A) has jurisdiction by law or special expertise with respect to an environmental, a social, or an economic impact involved in the operation; or
 - (B) may develop and enforce environmental standards with respect to those operations.
- (b) A person described in subsection (a) may do the following:
 - (1) File written objections to the proposed release from bond with the director.
 - (2) Request a public hearing within thirty (30) days after the last publication of the ~~permittee's~~ notice required by section 7 of this chapter.

SECTION 28. IC 14-34-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) As used in this section, "mining" includes contract mining.

(b) As used in this section, "operator" includes a predecessor in interest, subsidiaries, and affiliates as approved by the director.

(c) Participation in the bond pool is open to each operator applying for a permit under this article who, after May 3, 1978, has a five (5) year history of mining within Indiana and who meets the following conditions:

- (1) Is not subject to an outstanding cessation order issued under:
 - (A) IC 13-4.1-11-5 (before its repeal); or
 - (B) IC 14-34-15-6.
- (2) Does not owe a civil penalty under:
 - (A) IC 13-4.1-12 (before its repeal);
 - (B) IC 14-34-16; or
 - (C) the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328).
- (3) Does not:
 - (A) owe a fee:
 - (i) under IC 13-4.1 (before its repeal);
 - (ii) under this article; or
 - (iii) collected under the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328); or
 - (B) have a history of delinquency in the payment of fees or civil penalties.

C
o
p
y



- (4) Has never been suspended under:
 - (A) IC 13-4.1-6.5-6 (before its repeal); or
 - (B) section 6 of this chapter.
- (d) Participation in the bond pool is:
 - (1) optional for each permit application;
 - (2) subject to approval by the director; and
 - (3) not effective until the entrance fee has been paid in full.
- (e) The director may, based on all available information, disapprove an application that may create an unreasonable risk to the bond pool.
- (f) This chapter does not preclude compliance with IC 14-34-6 instead of participation in the bond pool before commencement of participation in the bond pool.

(g) Commencement of participation in the bond pool for the applicable permit constitutes an irrevocable commitment to participate in the bond pool for the applicable permit for the duration of the surface coal mining operations covered under the permit, **unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1.**

(h) An operator may apply for participation in the bond pool on a bond increment area under an existing permit. Commencement of participation in the bond pool for the bond increment area, within an existing permit, constitutes an irrevocable commitment to participate in the bond pool for the duration of that surface coal mining permit, **unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1.**

SECTION 29. IC 14-34-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) Subject to subsection ~~(b)~~, **(c)**, an operator is suspended from the bond pool if the operator:

- (1) fails to pay a fee or civil penalty under:
 - (A) IC 13-4.1 (before its repeal);
 - (B) this article; or
 - (C) the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328); or
- (2) receives a cessation order that is not abated.
- (b) **If the final release of a bond has not been obtained within ten (10) years after the date of the last required report of the affected area for the permit, including new disturbances, the director may require the operator to:**
 - (1) **replace the bond pool liability with bonds acceptable under IC 14-34-6-1; and**

C
o
p
y



(2) withdraw that operation from the bond pool.

If the operator fails to comply with the director's order to withdraw a mine area from the bond pool, the director may suspend the operator from the bond pool.

(c) An operator is not suspended from the bond pool if the director makes a written determination that mitigating circumstances are present that would not create an unreasonable risk to the bond pool if the operator's participation continues.

~~(c)~~ (d) An operator who is suspended from the bond pool shall cease all surface coal mining operations until the operator furnishes a new performance bond under IC 14-34-6-1 in an amount calculated under IC 14-34-6-2 for all disturbed areas and proposed additional mining areas under the permit. When the new performance bond has been executed, the bond pool has no additional liability for reclamation on any part of the area covered by the applicable permit.

SECTION 30. IC 14-34-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) The surface coal mine reclamation bond pool committee is established. The committee consists of the following:

(1) Five (5) members ~~not more than three (3) of whom may belong to the same political party;~~ appointed by the ~~governor~~ **director** as follows:

(A) Three (3) members must represent a cross-section of coal operators.

(B) One (1) member must be a member of the commission.

(C) One (1) member must be a representative of the public with a license as a certified public accountant: **knowledge of reclamation performance guarantees.**

(2) The director or the director's designee, who is a nonvoting member.

(b) The term of each member is four (4) years beginning July 1. ~~A member may not be appointed to more than two (2) full terms.~~ The ~~governor~~ **director** may remove an appointed member for cause.

(c) The committee shall do the following:

(1) Annually elect a chairman.

(2) Adopt rules for organization and procedure.

(d) Each member of the committee who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided in the state travel policies and procedures

C
o
p
y



established by the Indiana department of administration and approved by the budget agency.

(e) The committee shall, acting in an advisory capacity to the director, do the following:

(1) Meet as necessary to perform duties under this chapter, but not less than ~~two (2) times~~ **one (1) time** each year, for the purpose of formulating recommendations to the director concerning oversight of the general operation of the bond pool.

(2) Review and make recommendations concerning the following:

(A) All proposed expenses from the bond pool.

(B) All applications for admission to the bond pool.

(f) The director shall report ~~semiannually~~ **annually** to the committee and to the governor on the status of the bond pool.

SECTION 31. IC 14-34-19-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 15. (a) This section applies to the following:**

(1) When the department is considering a mine land reclamation project under IC 14-34-1-2 or 312 IAC 25-2-3 that is:

(A) at least fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds; or

(B) less than fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds if the construction is an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 30 U.S.C. 1328) and this chapter.

Government financing guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments are not considered funds appropriated by a governmental entity under this subdivision.

(2) When the level of funding for the construction will be less than fifty percent (50%) of the total cost because of planned coal extraction.

(b) The department must make the following determinations:

(1) The likelihood that coal will be mined under a surface coal mining and reclamation operations permit issued under this

C
o
p
y



article. The determination must consider available information, including the following:

- (A) Coal reserves from existing mine maps or other sources.
- (B) Existing environmental conditions.
- (C) All prior mining activity on or adjacent to the site.
- (D) Current and historical coal production in the area.
- (E) Any known or anticipated interest in mining the site.
- (2) The likelihood that nearby mining activities might create new environmental problems or adversely affect existing environmental problems at the site.
- (3) The likelihood that reclamation activities at the site might adversely affect nearby mining activities.
- (c) If a decision is made to proceed with the reclamation project, the department must make the following determinations:
 - (1) The limits on any coal refuse, coal waste, or other coal deposits that can be extracted under the exemption under IC 14-34-1-2 and 312 IAC 25-2-3.
 - (2) The delineation of the boundaries of the abandoned mine lands reclamation project.
- (d) The following documentation must be included in the abandoned mine lands reclamation case file:
 - (1) Determinations made under subsections (b) and (c).
 - (2) The information taken into account in making the determinations.
 - (3) The names of the persons making the determinations.
- (e) The department must do the following for each project:
 - (1) Characterize the site regarding mine drainage, active slide and slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrological balance.
 - (2) Ensure that the reclamation project is conducted according to provisions of 30 CFR Subchapter R, this chapter, and applicable procurement provisions to ensure the timely progress and completion of the project.
 - (3) Develop specific site reclamation requirements, including, when appropriate, performance bonds that comply with procurement procedures.
 - (4) Require the contractor conducting the reclamation to provide, before reclamation begins, applicable documents that authorize the extraction of coal and any payment of royalties.
- (f) The contractor must obtain a surface coal mining and

C
O
P
Y



reclamation operations permit under this article for any coal extracted beyond the limits of the incidental coal specified in subsection (c)(1).

SECTION 32. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding 312 IAC 25-1-57, "government financed construction" means construction that is:

(1) at least fifty percent (50%) funded by funds appropriated from a government financing agency's budget or obtained from general revenue bonds; or

(2) less than fifty percent (50%) funded by funds appropriated from a government financing agency's budget or obtained from general revenue bonds if construction is undertaken as an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328) and IC 14-34-19.

However, construction through government financing guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments do not qualify as government financed construction.

(b) Before July 1, 2006, the department of natural resources shall amend 312 IAC 25-1-57 to correspond with this SECTION.

(c) This SECTION expires July 1, 2007.

C
O
P
Y



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

**C
o
p
y**

HEA 1203 — CC 1+

